

**Letter of Findings Number: 04-20100627**  
**Sales/Use Tax**  
**For Tax Years 2007 - 2009**

**NOTICE:** Under IC § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE**

**I. Sales/Use Tax—Equipment.**

**Authority:** IC § 6-8.1-5-1(c); IC § 6-2.5-2-1; IC § 6-2.5-3-2; IC § 6-2.5-5-3; Indiana Dep't of State Revenue v. Interstate Warehousing, 783 N.E.2d 248 (Ind. 2003); [45 IAC 2.2-5-8](#).

Taxpayer protests the assessment of use tax on a resin tank.

**STATEMENT OF FACTS**

Taxpayer was audited by the Indiana Department of Revenue ("Department") for Sales/Use Tax. The Audit Report states that Taxpayer "is a manufacturer of composite materials" and that Taxpayer "converts raw materials (resin) into vanity tops and bathroom furnishing." As a result of the Audit, Taxpayer received proposed assessments. Taxpayer filed a protest with the Department. An administrative hearing was conducted and this Letter of Findings ("LOF") results. Further facts will be supplied as required.

**I. Sales/Use Tax—Equipment.**

**DISCUSSION**

At the outset, the Department notes that under IC § 6-8.1-5-1(c): "The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." The Department also notes that the rules of statutory construction require that exemption statutes be strictly construed against the Taxpayer. Indiana Dep't of State Revenue v. Interstate Warehousing, 783 N.E.2d 248, 250 (Ind. 2003).

Pursuant to the Indiana Code, a sales tax ("gross retail tax") is imposed on retail transactions made in Indiana unless a valid exemption is applicable. IC § 6-2.5-2-1; IC § 6-2.5-5-1 et seq. Also, a complementary excise tax "known as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction." IC § 6-2.5-3-2(a).

Taxpayer, in its protest letter, states that it "wishes to appeal the use tax assessed on the purchase of a 6,000 gallon, dual containment, and heated, bulk resin tank...."

The relevant exemption statute is IC § 6-2.5-5-3, which states:

(a) For purposes of this section:

(1) the retreading of tires shall be treated as the processing of tangible personal property; and

(2) commercial printing shall be treated as the production and manufacture of tangible personal property.

(b) Except as provided in subsection (c), transactions involving manufacturing machinery, tools, and equipment are exempt from the state gross retail tax if the person acquiring that property acquires it for direct use in the direct production, manufacture, fabrication, assembly, extraction, mining, processing, refining, or finishing of other tangible personal property.

(c) The exemption provided in subsection (b) does not apply to transactions involving distribution equipment or transmission equipment acquired by a public utility engaged in generating electricity.

(Emphasis added).

[45 IAC 2.2-5-8](#)(d) states in relevant part:

(d) Pre-production and post-production activities. "Direct use in the production process" begins at the point of the first operation or activity constituting part of the integrated production process and ends at the point that the production has altered the item to its completed form, including packaging, if required.

And the "Example" provided in [45 IAC 2.2-5-8](#)(d) states:

(1) The production of pharmaceutical items is accomplished by a process which begins with weighing and measuring out appropriate ingredients, continues with combining and otherwise treating the ingredients, and ends with packaging the items. Equipment used to transport raw materials to the manufacturing plant is employed prior to the first operation or activity constituting part of the integrated production process and is taxable. Weighing and measuring equipment and all equipment used as an essential and integral part of the subsequent manufacturing steps, through packaging, qualify for exemption. Equipment which loads packaged products from the packaging step of production into storage, or from storage into delivery vehicles, is subject to tax.

(Emphasis added).

The Department also notes that [45 IAC 2.2-5-8](#)(e) states in part:

Storage equipment. Tangible personal property used in or for the purpose of storing raw materials or finished

goods is subject to tax except for temporary storage equipment necessary for moving materials being manufactured from one (1) machine to another or from one (1) production step to another.

(1) Temporary storage. Tangible personal property used in or for the purpose of storing work-in-process or semi-finished goods is not subject to tax if the work-in-process or semi-finished goods are ultimately completely produced for resale and in fact resold.

The question before the Department is whether or not the resin tank is storage of raw materials or part of the integrated production process.

The Audit Report states:

The bulk resin storage tank is located outside the plant. The vendor would fill the tank on the loading dock with liquid resin heated at 77 to 80 degrees. The raw material is stored and maintained in the tank until the resin runs through a Foxboro DP load cell. The cell measures and weighs the resin and sends it through a pipe into the production plant. The load cell's use is exempt from tax.

And further, the Audit Report states:

The audit revealed that the resin in the bulk storage tank does not undergo any change. The resin is stored and maintained at a constant temperature until needed for production. The raw material would then enter production upon being measured. No value is added to the product while the resin is stored in the bulk storage tank.

Taxpayer, in turn, states:

This is a 6,000 gallon, heated and dual containment resin tank. Dual containment means there is an inner tank, which holds approximately 6,000 gallons of liquid resin. The outer tank has hot air circulated through it to keep the resin at 77 degrees, for production purposes. The small building attached to the resin tank houses an electric heater and blower which circulates heated air between the inner and outer tank to keep the resin at the correct temperature. In addition, the small building houses the intake valve, which the delivery truck connects to in order to fill the taxpayer's tank.

This tank is not used for long term storage. In order for production to continue, the taxpayer's resin tank is filled two to three times a week and is delivered at a temperature in excess of 80 degrees by a double-wall truck container. The delivery company must keep the resin insulated in order for the resin to pump from the truck, into the taxpayer's tank. Should the delivery company fail to deliver the resin at the correct temperature or, should the taxpayer's tank fail to maintain the correct temperature, the taxpayer's resin will become too viscous and the production process would be compromised.

And in documents provided with its protest, Taxpayer states in relevant part that:

The resin temperature is consistently maintained and the tank has a weighing device [ sic] to ensure the amount of resin on hand during the manufacturing process. The resin is pumped directly from the holding tank to casting machines which produces the taxpayer's product.

(Emphasis added).

Like the example in [45 IAC 2.2-5-8\(d\)](#) ("weighing and measuring out appropriate ingredients"), Taxpayer's tank has a weighing device (i.e., the load cell). Taxpayer argues that the weighing device is built into the tank unit (in other words, the device is incorporated into the tank). Based upon the facts and documentation provided by Taxpayer, the Department finds that the tank with the incorporated weighing device is not merely storage, but is the first step of Taxpayer's integrated production process.

#### **FINDING**

Taxpayer's protest is sustained.

*Posted: 11/30/2011 by Legislative Services Agency*

An [html](#) version of this document.